IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3474 OF 2004

M/s.Progressive Promoters
and Ors. ..Applicants

Vs.

Union of India & Anr. ..Respondents

...

Mr.U.S.Samudrala Advocate for Applicants
Mr.Ganesh Bhujbal i/b Prakash Naik
for Respondent No.2

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 12, 2006

P.C.

1. Heard the learned advocate for the applicants i.e. original accused and learned advocate for the Respondent no.2 i.e. original complainant.

2. The applicants are seeking quashing of C.C.No. 72 of 2003 which is pending before the learned Chief Judicial Magistrate at Silvassa. The said case is under Section 138 read with Section 141 of Negotiable Instruments Act.

3. It is seen that in the said case, process has been issued against the applicants under Section 138 read with Section 141 of Negotiable Instruments Act. The learned advocate for the applicants submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the applicants is set aside, the proceedings in respect of the applicants, would come to an end.

4. In view of the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode reported in 2005(3) Mh.L.J.778,** I am of the opinion that the applicants have an alternate efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicants to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the

applicants makes a statement that the necessary revision will be preferred within five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of five weeks.

6. The learned advocate for the respondent no.2-complainant fairly states that no objection will be raised in respect of delay in filing the revision.

7. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

8. It is further stated on behalf of the applicants that in the present case, N.B.Ws. have been issued against the applicants and it is prayed that N.B.Ws. be quashed. Looking to the fact that liberty has been granted to the applicants to prefer revision before the concerned Sessions Court impugning the order issuing process against them, the said N.B.Ws. are stayed till the disposal of

the revision before the Sessions Court.

9. It is further stated that applicant No.4 is about 67 years of age and all the applicants are residing at Vijaywada. Under these circumstances, it is submitted that applicants be granted exemption from personal appearance before the trial Court. Looking to these facts, the learned Magistrate shall not insist on the personal appearance of the applicants unless he is of the opinion that their presence is absolutely necessary. In such case, on notice being given to the applicants, they shall attend the trial Court on the date indicated by the trial Court.

10. Criminal Application is disposed of.

[V.K.TAHILRAMANI,J.]